

Secretary of State
**CERTIFICATE AND ORDER FOR FILING TEMPORARY ADMINISTRATIVE RULES
and
STATEMENT OF NEED AND JUSTIFICATION**

I certify that the attached copies are true, full and correct copies of the TEMPORARY Rule(s) adopted on June 28, 2017 by the

Department of Human Services, Office of Self-Sufficiency Programs	461
Agency and Division	Chapter Number
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to become effective July 1, 2017 through December 27, 2017.*

**Temporary rules are effective for a maximum of 180 days including the effective date.*

Rule Caption: Changing Rules about APD Medical Eligibility Upon Hospitalization or Release from Public Institution

In the Matter of: Amending OAR 461-115-0090, 461-135-0950, and 461-180-0090

AMEND: 461-115-0090, 461-135-0950, 461-180-0090

ORS 409.050, 411.060, 411.404, 411.816, 412.014, 412.049, 413.085, 414.685

Stat. Auth.

Other Auth.

ORS 409.010, 411.060, 411.404, 411.439, 411.447, 411.816, 412.014, 412.049, 414.426

Stats. Implemented

Rule Summary

OAR 461-115-0090 about authorized representatives, OAR 461-135-0950 about eligibility for inmates and residents of state hospitals, and OAR 461-180-0090 about the effective date for starting medical benefits are being amended to follow state statutes and state that incarcerated individuals and individuals in a state hospital may receive benefits under OSIPM and QMB when temporarily released for hospital procedures; remove a provision in the definition of serious mental illness regarding the substance abuse and the likelihood that a person will no

longer meet an applicable diagnosis if the substance abuse discontinues or declines; substitute the term “state hospital” to clarify OAR 461-135-0950; remove the 12-month limit on suspension of benefits for individuals entering public institutions or the state hospital; replace the name of the specific former contractor for certification services with a general statement of certification; allow eligibility to certain state hospital residents who entered the state hospital before reaching age 22 (instead of age 21); authorize a designee of a correctional facility to apply for OSIPM and QMB on behalf of a person residing in that correctional facility; specify legitimate uses of confidential information for an applicant who is a resident of a correctional facility and when that information may be disclosed; and specify that the effective date for starting medical benefits under the OSIPM program for a person released from a correctional institution is the release date or the date the person begins hospitalization outside of the correctional facility.

The rule text showing changes is available at http://www.dhs.state.or.us/policy/selfsufficiency/ar_temporary.htm.

Need for the Rules

OAR 461-115-0090, OAR 461-135-0950, and OAR 461-180-0090 need to be amended to comply with ORS 411.439 and ORS 411.447 by stating that incarcerated individuals and individuals in a state hospital may receive benefits under OSIPM and QMB when temporarily released for hospital procedures; removing a provision in the definition of serious mental illness regarding the substance abuse and the likelihood that a person will no longer meet an applicable diagnosis if the substance abuse discontinues or declines; substitute the term “state hospital” to clarify OAR 461-135-0950; removing the 12-month limit on suspension of benefits for individuals entering public institutions or the state hospital; replacing the name of the specific former contractor for certification services with a general statement of certification; allowing eligibility to certain state hospital residents who entered the state hospital before reaching age 22 (instead of age 21); authorizing a designee of a correctional facility to apply for OSIPM and QMB on behalf of a person residing in that correctional facility; specifying legitimate uses of confidential information for an applicant who is a resident of a correctional facility and when that information may be disclosed; and specifying that the effective date for starting medical benefits under the OSIPM program for a person released from a correctional institution is the release date or the date the person begins hospitalization outside of the correctional facility.

Documents Relied Upon

Social Security Policy and Operations Manual System, SI 00520.009 available at <https://secure.ssa.gov/poms.nsf/lnx/0500520009> and SI 00520.001 available at <https://secure.ssa.gov/poms.nsf/lnx/0500520001>

Justification of Temporary Rules

The Department finds that failure to act promptly by amending OAR 461-115-0090, OAR 461-135-0950, and OAR 461-180-0090 will result in serious prejudice to the public interest, the Department, and some individuals connected to public institutions. The Department needs to

proceed by temporary rule to assure immediate compliance with state statutes that make individuals eligible for medical benefits when released to hospitals for medical procedures and when released from public institutions.

Authorized Representatives; General

- (1) The head of household, *spouse* (see OAR 461-001-0000), or any other responsible member of the household may designate an authorized representative to act on behalf of the household in making application for the program, in reporting changes, in obtaining benefits, or in using benefits.
- (2) In all programs except the SNAP program, the Department must allow a person or persons of the applicant's choice to act as the authorized representative unless the person may cause harm to the client or may be considered as having a conflict of interest.
- (3) In all programs except the SNAP program, if an authorized representative is needed but has not been designated by the client, the Department will appoint one.
- (4) In the SNAP program:
 - (a) Except as limited by sections (5) and (6) this rule, the selection of an authorized representative must be made in writing by an adult member of the household.
 - (b) The selection and authority of an authorized representative is further limited by OAR 461-115-0140.
- (5) A client who resides in a drug addiction or alcoholic treatment center identified in OAR 461-135-0550(2) may apply for SNAP program benefits only through an authorized representative. The authorized representative must be an employee of and designated by the center.
- (6) A client with a *disability* (see OAR 461-001-0015) who participates in the SNAP program while residing in a *group living facility* (see OAR 461-001-0015) may participate through an authorized representative or on his or her own behalf, at the option of the *group living facility* (see OAR 461-135-0510(2)(e)).
- (7) In the TANF program, a person not related to the dependent child may serve as authorized representative or alternate payee for not more than 60 days.
- (8) A designee of a correctional facility may apply for OSIPM and QMB on behalf of an individual, while the individual is residing in a correctional facility, for the purpose of establishing eligibility for medical assistance until the release of the individual from the correctional facility or during a period of hospitalization that occurs outside of the correctional facility.
 - (a) The designee may obtain information necessary to determine eligibility for medical assistance, including the person's Social Security number or information that is not otherwise subject to disclosure under ORS 411.320 or ORS 413.175.

(b) The information obtained under subsection (a) of this section may be used only for the purpose of assisting the person in applying for medical assistance and may not be re-disclosed without the authorization of the individual.

Stat. Auth.: ORS 409.050, 411.060, 411.404, 411.816, 412.014, 412.049, 413.085, 414.685

Stats. Implemented: ORS 409.010, 411.060, 411.404, 411.447, 411.816, 412.014, 412.049

Eligibility for Inmates and Residents of State Hospitals

- (1) This rule sets out additional restrictions on the eligibility of inmates and residents of state hospitals for programs covered by Chapter 461 of the Oregon Administrative Rules.
- (2) Definition of an "inmate".
 - (a) An inmate is an individual living in a *public institution* (see section (3) of this rule) who is:
 - (A) Confined involuntarily in a local, state or federal prison, jail, detention facility, or other penal facility, including an individual being held involuntarily in a detention center awaiting trial or an individual serving a sentence for a criminal offense;
 - (B) Residing involuntarily in a facility under a contract between the facility and a *public institution* where, under the terms of the contract, the facility is a *public institution*;
 - (C) Residing involuntarily in a facility that is under governmental control; ~~or~~
 - (D) Receiving care as an outpatient while residing involuntarily in a *public institution*; or
 - (E) In the OSIPM and QMB programs, released from the *public institution* during a temporary period of hospitalization in a medical institution outside of the correctional facility.
 - (b) An individual is not considered an inmate when:
 - (A) The individual is released on parole, probation, or post-prison supervision;
 - (B) The individual is on home- or work-release, unless the individual is required to report to a *public institution* for an overnight stay;
 - (C) The individual is staying voluntarily in a detention center, jail, or county penal facility after his or her case has been adjudicated and while other living arrangements are being made for the individual; or
 - (D) The individual is in a *public institution* pending other arrangements as defined in 42 CFR 435.1010.
- (3) A "public institution" is any of the following:
 - (a) A state hospital (see ORS 162.135).

- (b) A local correctional facility (see ORS 169.005): a jail or prison for the reception and confinement of prisoners that is provided, maintained and operated by a county or city and holds individuals for more than 36 hours.
- (c) A Department of Corrections institution (see ORS 421.005): a facility used for the incarceration of individuals sentenced to the custody of the Department of Corrections, including a satellite, camp, or branch of a facility.
- (d) A youth correction facility (see ORS 162.135):
 - (A) A facility used for the confinement of youth offenders and other individuals placed in the legal or physical custody of the youth authority, including a secure regional youth facility, a regional accountability camp, a residential academy and satellite, and camps and branches of those facilities; or
 - (B) A facility established under ORS 419A.010 to 419A.020 and 419A.050 to 419A.063 for the detention of children, wards, youth, or youth offenders pursuant to a judicial commitment or order.
- (4) Definition of serious mental illness. An individual has a serious mental illness if the individual has been diagnosed by a psychiatrist, a licensed clinical psychologist or a certified non-medical examiner as having dementia, schizophrenia, bipolar disorder, major depression or other affective disorder or psychotic mental disorder other than a substance abuse disorder and other than a disorder that is ~~both--~~
 - ~~(a) Caused~~caused primarily by substance abuse; ~~and~~
 - ~~(b) Likely to no longer meet the applicable diagnosis if the substance abuse discontinues or declines.~~
- (5) An individual who resides in a state hospital (see subsection (3)(a) of this rule), public institution, meets the definition of a serious mental illness (see section (4) of this rule), and applies for medical assistance between 90 and 120 days prior to the expected date of the person's release from the ~~public institution~~state hospital may be found eligible for medical assistance. If the individual is determined to be eligible, the effective date of the individual's medical assistance is the date the individual is released from the institution.
- (6) ~~A~~In the OSIPM and QMB programs, a client who becomes a resident of a state hospital~~state hospital~~ has medical benefits suspended ~~for up to twelve full calendar months~~ if the client is at least 21 years of age and under 65 years of age. When a client with suspended medical benefits is no longer a resident of the ~~state hospital~~state hospital, or when the individual is admitted to a medical institution outside of the state hospital for a period of hospitalization, medical benefits are reinstated effective the first day the client is no longer a resident, if the client continues to meet eligibility for the medical program.

- (7) An individual residing in a ~~state psychiatric institution~~*state hospital* may be eligible for OSIPM benefits if the individual:
- (a) Receives services on a certified ward;
 - (b) ~~Meets level of care as certified by Acumentra~~Receives a Certificate of Need for Services from the State-authorized agency; and
 - (c) Meets one of the following:
 - (A) Is 65 years of age or older;
 - (B) Is under 21 years of age; or
 - (C) Is 21 years of age or older, if the basis of need is disability or blindness; eligibility was determined before the individual reached 21 years of age; and the individual entered the state hospital before reaching ~~21~~22 years of age.
- (8) For all programs covered under chapter 461 of the Oregon Administrative Rules:
- (a) Except as provided otherwise in this rule, an inmate of a public institution is not eligible for benefits.
 - (b) If a pregnant woman receiving medical assistance through the OSIPM program becomes an *inmate* of a *public institution*, her medical benefits are *suspended*. When the Department is informed the woman is no longer an *inmate*, her medical benefits are reinstated--effective on the first day she is no longer an *inmate*--if she is still in her protected period of eligibility under OAR 461-135-0010.
 - (~~b~~c) If an individual receiving medical assistance through the OSIPM or QMB program becomes an *inmate* of a correctional facility ~~with an expected stay of no more than 12 months~~, medical benefits are suspended ~~for up to 12 full calendar months~~ during the incarceration period. ~~When~~In the OSIPM or QMB program, when the Department is notified that an individual with suspended benefits has been released or has been admitted to a hospital outside of the public institution for a period of hospitalization, and the notification takes place within 10 days of the release, medical benefits are reinstated effective the first day the client is no longer an *inmate* if the client continues to meet eligibility for the medical program.
- (9) In the GA and SNAP programs, in addition to the other provisions of this rule, an *inmate* released from a *public institution* on home arrest, and required to wear an electronic device to monitor his or her activity, is ineligible for benefits if the correctional agency provides room and board to the individual.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.404, 411.816, 412.014, 412.049, 413.085, 414.685

Stats. Implemented: ORS 409.010, 411.060, 411.070, 411.404, ~~411.439, 411.443, 411.445, 411.447~~, 411.816, 412.014, 412.049, 414.426, ~~2011 Or. Laws 207~~

Effective Dates; Initial Month Medical Benefits

The effective date for starting medical benefits for an eligible client is as follows:

- (1) In the OSIPM and QMB-DW programs:
 - (a) Except as provided for in subsections (b) to (h) of this section:
 - (A) If the client meets all eligibility requirements on the *date of request* (see OAR 461-115-0030), it is the first day of the month that includes the *date of request*. An OSIPM program client who is *assumed eligible* under OAR 461-135-0010(5) meets "all eligibility requirements" for the purposes of this section as follows:
 - (i) Effective the first day of the month of the initial SSI payment if the client is age 21 or older.
 - (ii) Effective the first day of the month prior to the month of the initial SSI payment if the client is under the age of 21.
 - (B) If the client does not meet all eligibility requirements on the *date of request*, but meets all requirements after the *date of request*, within the application processing time frames of OAR 461-115-0190, it is the first day of the month that includes the date that all eligibility requirements are met.
 - (b) If the client does not complete the application within the time period described in OAR 461-115-0190 (including the authorized extension), the determination of an effective date requires a new *date of request*.
 - (c) Except as provided for in subsections (d) and (e) of this section, for a new applicant who is an *inmate* (see OAR 461-135-0950) on any day of the month during the month that the applicant is determined to meet all eligibility requirements, the effective date is determined in accordance with subsections (a) and (b) of this section, except that coverage is not in effect for any day during the month that the applicant is an *inmate* other than the date of incarceration and the date of release.
 - (d) The effective date for an individual residing in a *public institution* (see OAR 461-135-0950) meeting the requirements of OAR 461-135-0950 regarding applications received by individuals with a serious mental illness is determined in accordance with OAR 461-135-0950.

- (e) The effective date for an individual meeting the eligibility requirements of OAR 461-135-0950 regarding residents of a state psychiatric institution is the date that all eligibility requirements are met, including other chapter 461 eligibility requirements, if those requirements are met within the application processing time frames of OAR 461-115-0190. Otherwise the requirements of subsection (b) of this section apply.
 - (f) The effective date for an *inmate* or a resident of state hospital with suspended benefits that will be reinstated is determined in accordance with OAR 461-135-0950. If benefits will not be reinstated the *inmate* is considered a new applicant and the effective date is determined in accordance with subsection (c) of this section.
 - (g) The effective date for a new applicant who is receiving Medicaid in another state on the *date of request*, but meets the requirements of OAR 461-165-0030 regarding receipt of medical benefits in another state is:
 - (A) The *date of request* if all eligibility requirements are met on the *date of request* or after the *date of request*, but during the month that includes the *date of request*.
 - (B) If all eligibility requirements are not met during the month that includes the *date of request* the effective date is determined in accordance with paragraph (1)(a)(B) and subsection (b) of this section.
 - (h) The effective date for an applicant receiving Medicaid in another state prior to the *date of request*, but during the month that includes the *date of request*, is the day following the day that Medicaid benefits end in the other state if all eligibility requirements are met during the month that includes the *date of request*. If all requirements are not met in the month that includes the *date of request* the effective date is determined in accordance with paragraph (1)(a)(B) and subsection (b) of this section.
- (2) In the OSIPM program, if an individual has been released from a correctional institution and is determined eligible for OSIPM, the effective date of beginning the individual's medical assistance is the date the individual is released from the correctional facility or the date the individual begins the period of hospitalization outside of the correctional facility.
- (3) In the QMB-BAS program, it is the first of the month after the *benefit group* (see OAR 461-110-0750) has been determined to meet all QMB-BAS program eligibility criteria and the Department receives the required verification.
- (34) In the QMB-SMB and QMB-SMF programs, it is --

- (a) The first of the month in which the *benefit group* meets all program eligibility criteria and the Department receives the required verification; or
- (b) The first of the month in which the Low Income Subsidy (LIS) information is received by the Social Security Administration (SSA), if the SMB or SMF program application was generated by the electronic transmission of LIS data from the SSA and the *benefit group* meets all program eligibility criteria.

(45) In the REFM program:

- (a) Except as provided in subsection (b) of this section:
 - (A) If the individual meets all eligibility requirements on the *date of request* (see OAR 461-115-0030), it is the *date of request*.
 - (B) If the individual does not meet all eligibility requirements on the *date of request*, it is the first day following the *date of request* that all eligibility requirements are met.
- (b) If the individual does not complete the application within the time period described in OAR 461-115-0190 (including the authorized extension), the determination of an effective date requires a new *date of request*.

(56) Retroactive eligibility is authorized under certain circumstances in some medical programs (see paragraph (1)(a)(A) of this rule, OAR 461-135-0875, and 461-180-0140).

Stat. Auth.: ORS 409.010, 409.050, 411.060, 411.070, 411.404, 411.704, 411.706, 413.085, 414.685, 414.839

Stats. Implemented: ORS 409.010, 409.050, 411.060, 411.070, 411.404, 411.439, 411.447, 411.704, 411.706, 413.085, 414.685, 414.839